



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/284,199	08/02/1994	MICHAEL M. BURRELL	1130261CONT.	4511
759	90 09/04/2002			
Samuel B. Abrams			EXAMINER	
PENNIE & EDMONDS LLP 1155 Avenue of the Americas			FOX, DAVID T	
New York, NY 10036-2711			ART UNIT	PAPER NUMBER
			1638	27
			DATE MAILED: 09/04/2002	- /

Please find below and/or attached an Office communication concerning this application or proceeding.

### Deficiency Summary Color Group Art Unit Good ### Description Group Art Unit Good ### The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address— Parlod for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE MONTH(S) FROM THE MAILING DATE ### OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1,136(a), in no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply expected above, such period shad, by delatal, aspire SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply the specified above, such period shad, by delatal, aspire SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply the specified above, such period shad, by delatal, aspire SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply the specified above, such period shad, by delatal, aspire SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the period of this communication. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specified shore, aspired time. - If NO period for reply the specifie					
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Price this action is FINAL □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213. Disposition of Claims □ Claim(s)	from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a real If NO period for reply is specified above, such period shall, by default,	ply within the statutory minimum of thirty (30) days will be considered timely. expire SIX (6) MONTHS from the mailing date of this communication.			
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Disposition of Claims Claim(s) 2-4, 7, 3, 13-16, 20, 21, 31, 34, 39, 43 Is/are pending in the application. Of the above claim(s) Is/are withdrawn from consideration. Is/are withdrawn from consideration. Is/are allowed. Is/are allowed. Is/are objected to. Is/are objected to. Claim(s) 31 + 39 Is/are objected to. Claim(s) Application Papers See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The proposed drawing correction, filed on Is/are objected to by the Examiner. The specification is objected to by the Examiner. The cath or declaration is objected to by the Examiner. Priority under 35 U.S.C. § 119 (a)-(d). Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d). Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d). Received. Received. Received in this national stage application from the International Bureau (PCT Rule 17.2(a)). The credified copies not received: Attachment(s) Information Disclosure Statement(s), PTO-1449, Paper No(s). Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152 Notice of Draftsperson's Patent Drawing Review, PTO-948					
Claim(s)	□ Since this application is in condition for allowance except accordance with the practice under Ex parte Quayle, 1939	for formal matters, prosecution as to the merits is closed in 5 C.D. 1 1; 453 O.G. 213.			
Stare withdrawn from consideration. Stare withdrawn from consideration. Claim(s) Stare allowed. Stare allowed. Stare allowed. Stare rejected. Stare rejected. Stare rejected. Stare objected to. Claim(s) Stare objected to. Stare objected to. Claim(s) Stare objected to requirement. The proposed drawing correction, filed on Stare objected to by the Examiner. The drawing(s) filed on Stare objected to by the Examiner. The oath or declaration is objected to by the Examiner. The oath or declaration is objected to by the Examiner. The oath or declaration is objected to by the Examiner. All Some* None of the CERTIFIED copies of the priority documents have been received. received in Application No. (Series Code/Serial Number) received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)). Altachment(s) Information Disclosure Statement(s), PTO-1449, Paper No(s). Interview Summary, PTO-413 Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152 Notice of Draftsperson's Patent Drawing Review, PTO-948 Other	Disposition of Claims				
Claim(s)	B Claim(s) 2-4, 7, 8, 13-16, 20, 21	131,34,39,43 is/are pending in the application.			
Scare objected to.	Of the above claim(s)	is/are withdrawn from consideration.			
Scare objected to.	☐ Claim(s)	is/are allowed.			
Scare objected to.	Claim(s) 2-4,7, 8, 13-16, 20, 21, 3	1, 43 is/are rejected.			
Application Papers See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The proposed drawing correction, filed on	© Claim(s) 31 + 39	is/are objected to.			
Application Papers See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The proposed drawing correction, filed on	☐ Claim(s)————————————————————————————————————				
The proposed drawing correction, filed on	Application Papers	requirement.			
The drawing(s) filed on	☐ See the attached Notice of Draftsperson's Patent Drawing	Review, PTO-948.			
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U. S. Patent and Trademark Office PTO-326 (Rev. 9-97) Art Unit: 1638

The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1638.

Interference No. 104046 has been terminated by a decision adverse to applicant. *Ex parte* prosecution is resumed.

The petition under 37 CFR 1.48(a) filed 5 October 1997 has been <u>GRANTED</u>. Inventor Keith Blundy has been deleted.

The amendment filed 5 October 1998 during Interference Proceedings has <u>NOT</u> been entered, either during those proceedings or presently, since the amendments are directed to subject matter corresponding to that in which Applicant received an Adverse judgment mailed 27 February 2002.

The Burrell declaration of 29 September 1998 has been considered, but is deemed MOOT in view of the Adverse judgment of 27 February 2002.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(g)(1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Application/Control Number: 08/284,199

Art Unit: 1638

Claims 2-4, 7-8, 13-16, 20-21, 34 and 43 are rejected under 35 U.S.C. 102(g) as being

anticipated by Kishore.

Claims 31 and 39 remain free of the prior art, as stated previously. These claims did not

correspond to the interference count, as they were drawn to plant transformation with a gene

encoding a different enzyme, which gene and enzyme was neither taught nor suggested by

Kishore or any other prior art.

Claims 31 and 39 are objected to as being dependent upon a rejected base claim, but

would be allowable if rewritten in independent form including all of the limitations of the base

claim and any intervening claims.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is (703) 308-0280. The examiner can normally be reached on Monday through Friday from 10:30AM to 7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached on (703) 306-3218. The fax phone number for this Group is (703) 872-9306. The after final fax phone number is (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

July 5, 2002

DAVID T. FOX PRIMARY EXAMINER GROUP 1880 / 6 3 8

Page 3

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